Sports and Entertainment Section – CBA

Colorado Ski Law 2023 - Ski Area Immunity under Redden v. Clear Creek.

What claims remain?

November 8, 2023, Noon–1 PM
Via Zoom
COBAR OUTLINE 11/8/2023

INTRODUCTION

1. Duties of ski area operators: The Ski Safety Act is "dead letter," as it pertains to duties of care of Ski Area Operators.

    a. On December 31, 2020, the Colorado Court of Appeals decided *Redden v. Clear Creek Skiing, Corporation.* 2020 COA 176, 490 p.3D 1063 (2020) *cert. denied* 21SC94 (Sept. 7, 2021) The appellate court's 2-1 majority decision in *Redden,* coupled with the Colorado Supreme Court's denial of the Plaintiff's petition for certiorari in the case, has rendered the Colorado Ski Safety Act to be dead letter as it pertains to any duty or liability of ski area operators including:

        i. statutory negligence (*negligence per se)* under the SSA,

        ii. the highest duty of care common law doctrine in Colorado,

        iii. Colorado Premises Liability Act, or

        iv. claims plead in simple negligence.

    b. *Redden* held an injured skier's claims, including statutory negligence claims, can be barred by a signed waiver and release obtained when purchasing a pass, renting equipment at a ski area's shop, or by merely having waiver language on the back of a lift ticket.

    c. Every skier in Colorado is either skiing or riding on a pass with a "Redden-effective waiver." Every Colorado ski area's season pass bought either in person or on the internet contains exculpatory language releasing the ski area operator. The terms of the exculpatory waiver impose an indemnity agreement on the purchaser wherein he or she promises to pay fees and costs if ever he or she were to sue the ski area operator. Every ski area shop requires the skier or snowboarder, upon a purchase or a rental, to sign a universal waiver pertaining to any liability of the shop, or the ski area. The waiver and release extend beyond the shop rental or sale to all "activities" incidental to the ski area operator's premises, lifts, operational duties or warnings. Waiver language appears on every printed day or multi-day pass sold at the ticket window.

d. Cases are pending and have been decided testing the contours of the ski areas' immunity.

2. In skier v. skier/snowboarder collisions, the SSA remains the authoritative source for the duties of skiers. The claims of skiers for injuries damages and losses against negligent skiers or snowboarders in collisions remain viable claims under the SSA. Skiers thus have some civil liability protections on the slopes given collisions are the cause of approximately 5% or about 1,500 injuries, some of which are severe or prove fatal.

Prompt: First, by upholding lift pass and ticket waivers *is Redden v. Clear Creek Skiing Corp*.,* a complete bar to all skiers' and lift passengers' claims against ski area operators, including claims under the duties enumerated by the Ski Safety Act (SSA) and, by the SSA's reference, the duties under the Passenger Tramway Safety Act (PTSA).

**Redden v. Clear Creek Skiing Corp.,* 2020 COA 176, 490 P. 3d 1063 cert. denied 2021 WL 4099429 (Sept. 7, 2021)

REDDEN V. CLEAR CREEK

3. Facts:
Charlotte Redden, Ph.D., began skiing in Colorado in the 1980s. Redden was an experienced intermediate skier. She had taken ski lessons at Loveland, Keystone, Steamboat, and Arapahoe Basin. In September 2016, Redden purchased a Loveland Ski Area "4-Pak" ticket for the 2016–17 season. Exculpatory language appeared on the backs of those tickets. Redden had also signed a release agreement when she purchased ski boots at the Loveland ski shop in April 2016.

Clear Creek Skiing Corp., owns the Loveland ski area. For simplicity, the defendant is referred to here as "Loveland." The Ptarmigan lift at Loveland was installed in 2016. It is a fixed grip triple chair manufactured by Leitner-Poma that serves beginner and intermediate terrain. The lift travels 3,085 linear feet at a rope speed of 7.9 feet per second. The chairs are 45 feet apart. Colorado Passenger Tramway Safety Board (PTSB) acceptance test data for the Ptarmigan lift indicates that at full speed, a normal stopping distance for the lift is 18 feet, less than half the distance between two chairs. At normal operating speed, there is a six-second interval between chairs. Near the unloading board, there are signs affixed to the final two towers warning approaching passengers to "prepare to unload" and "keep tips up."

Ptarmigan unloading area, image from Redden's R26 retained expert report:

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Ptarmigan unloading area from perspective of a Passenger approaching the unloading area. Image from Redden's R26 retained expert report:

On Thursday March 3rd, 2017, Charlotte Redden, Ph.D., loaded the Ptarmigan shortly before 12:45pm. There was one other passenger aboard her chair and to her right. At the unloading station Redden saw a previous passenger from a chair ahead had fallen on the unloading ramp, downhill and to her right. Her chair companion skied out and avoided the fallen skier. Redden tried to avoid the fallen passenger but was unable to get around the fallen skier before her chair caught up with her as it began to swing around the bullwheel. It hit Redden in her right hip. The momentum of the chair impact caused Redden to fall hard onto the packed snow on the left side of the lift unloading ramp.

In his Incident Report the lift attendant wrote: "A patron was on the ground of the unloading ramp, the injured party tried to avoid the fallen person and fell herself." Pl.'s Ex 5., Pl.'s Resp. to MSJ.

Ski patrol was called. Redden was evacuated by ambulance to St. Anthony Summit, where she was diagnosed with multiple pelvic fractures. Her total medical bills were approximately $176,000. Pl.'s Resp. to Discovery Req.

At the heart of Redden's claim was that the lift attendant at the unloading area had seen the previous skier fall on the ramp, and although that skier may have been getting up, the attendant

should have stopped the lift to protect oncoming passengers and the fallen skier him/herself from a pileup on the ramp.

As of 2011, the ANSI B-77 Code had for over 40 years provided that:

> ANSI 877.1-2006
> 4.3.2.3.3 Attendant
> The duties of the attendant shall be as follows:
> a) to maintain orderly passenger traffic conditions within his/her area of jurisdiction;
> b} to advise and assist passengers, as required;
> c) to maintain surveillance of his/her area of jurisdiction.
> The operator shall be advised of any unusual or improper occurrences. Should a condition develop in which continued operation might endanger a passenger, the attendant shall stop the aerial lift immediately and advise the operator. The operator shall also be advised of changes in weather, ground, or snow surface conditions. (emphasis added).

In 2011 this Regulation was modified, apparently to alter the duties imposed under state laws to read:
ANSI® B77.1-2022
Revision of
ANSI B77.1-2017
American National Standard
for Passenger Ropeways -As of 2011, the ANSI B-77 ANSI 877.1-2006
4.3.2.3.3 Attendant

> ANSI 877.1-2006
> 4.3.2.3.3 Attendant
>
> The duties of an attendant include:
>
> a) to be knowledgeable of operational and emergency procedures and the related equipment needed to perform the assigned duties;
>
> b) to monitor the passengers' use of the aerial lift; including observing, advising and assisting them while they are in the attendant's work area as they embark on or disembark from the aerial lift; and to respond to unusual occurrences or conditions, as noted. The attendant should respond by choosing an appropriate action, which may include any of the following.
> 1) assisting the passenger;
> 2) slowing the aerial lift (if applicable);
> 3) stopping the aerial lift;
> 4) continuing operation and observation.

c) to deny access to the aerial lift to any person using procedures and criteria provided;

d) to advise the operator of observed abnormal or unusual conditions that may adversely affect the safety of the operation.

The current version of the Colorado PTSB Regulations does not alter this duty. DEPARTMENT OF REGULATORY AGENCIES, Passenger Tramway Safety Board, PASSENGER TRAMWAYS 3 CCR 718-1. www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=11036&fileName=3%20CCR%2071 8-1.

4. The District Court granted Summary Judgment to Loveland based on the waivers Redden had signed.

On January 31, 2019 the trial court granted summary judgment to the ski area. Its order relied heavily on the Tenth Circuit's analysis in *Brigance v. Vail Summit Resorts, Inc.*, which held that "exculpatory agreements do not conflict with Colorado public policy merely because they release liability to a greater extent than the statutory inherent risk bar on claims set out in the SSA [Colorado Ski Safety Act CRS 33-44-101, -114]."

The district court held that pursuant to *Jones v. Dressel*, Loveland's waivers were enforceable. The Court held that absent any specific legislative provision expressly barring exculpatory agreements from preempting the SSA's statutory duties the waivers effectively nullified the SSA's duties of care imposed on ski area operators under C.R.S. 33-44-104. The Court did not address CRS § 33-44-114, which states that "[i]nsofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls."

5. Redden appealed. *Redden v. Clear Creek Skiing Corporation*, 2020 COA 17, 490 P.3d 1063 (2020). The Court of Appeals affirmed the District Court in a 2-1 decision.

6. Analysis & holding:

On December 31, 2020 the Court of Appeals affirmed the summary judgment in favor of Loveland. The court rejected Redden's key argument that the waivers were invalid because they were contrary to the public policy expressed in the PTSA (Passenger Tramway Safety Act) and SSA (Ski Safety Act). The majority held that the "acts establish a framework preserving common law negligence actions in ski and ski lift context" and do nothing to prohibit exculpatory agreements. Citing *Brigance*, the Redden majority found that Redden had failed to identify an SSA or PTSA provision that altered a common law duty. The waivers, according to the majority, were not contrary to public policy. Nor did the SSA bar exculpatory agreements overriding the statutory safety negligence provisions. The court observed that the SSA's imposition of a duty on a lift operator to take appropriate action, such as slowing the chair, assisting the passenger, or stopping the lift amounted to no more than a common law duty to "use reasonable care" when operating a ski lift. The SSA therefore did not create a distinct, new duty of care but instead essentially incorporated the preexisting common law negligence standard. The court suggested that recognizing a statutory negligence claim in this context would unjustifiably reward "crafty" pleading.

The court acknowledged that Phillips held that modification of statutory duties imposed by the SSA would "violate the public policy" expressed in the SSA. However, it distinguished and partially overruled Phillips. The court explained, quoting *Brigance*, that "'apparently unlike the agreement at issue in *Phillips*, the [two agreements here] do not appear to alter the duties placed upon [the ski resort] under the SSA, and the division's decision in *Phillips* 'appears to be inconsistent with the more recent pronouncements by the Colorado Supreme Court and General Assembly regarding Colorado policies toward the enforceability of exculpatory agreements in the context of recreational activities.'"

The court also stated that Colorado law had long permitted parties to contract away negligence claims in the recreational context and that courts will not assume that the General Assembly meant to displace underlying common law principles absent clear legislative expression of that intent. The Redden majority discussed an Alaska statute similar to the SSA and noted that Alaska's statute specifically included an anti-waiver provision. The court stated that if the Colorado legislature wanted to invalidate waivers, "it knew how to do so."

Thus, the court held that the PTSA and SSA do not preclude enforcement of exculpatory agreements. In large part, the Redden majority relied on the logic in *Brigance,* which noted that the General Assembly overruled the Colorado Supreme Court's holding in *Cooper v. Aspen Skiing Co*. when it enacted CRS §13-22-107. *Cooper* held that Colorado's public policy prohibited a parent or guardian from releasing prospective negligence claims on behalf of a minor who injured himself while skiing. In *Redden*, the court agreed with the conclusion in *Brigance* that the General Assembly's enactment of §13-22-107 "suggests it did not intend and would not interpret the SSA as barring [exculpatory] agreements for adults." The *Cooper* case and subsequent legislation did not involve whether an exculpatory agreement may waive a statutory negligence claim under the SSA or the PTSA.

7. Concurrence & Dissent:

Judge Davidson agreed that the exculpatory agreement was effective as to Redden's common law negligence claims alleging that Loveland breached the highest duty of care. However, Judge Davidson pointedly dissented on the majority's decision to hold that the exculpatory agreements and lift ticket language effectively nullified Redden's statutory negligence claims. In her dissent, Judge Davidson noted that Colorado state and federal court cases upheld exculpatory agreements in recreation cases, and "reluctantly agreed" with the majority's interpretation of "legislative inaction as approval of the use of exculpatory agreements" to preclude Redden's negligence claim. However, she disagreed with the majority's conclusion that the exculpatory agreements barred Redden's negligence per se claim.

Neither the majority, nor the dissent, argued that Section 114 stating that "this article controls," was an effective anti-waiver clause.

8. Petition for Certiorari.

On February 25, 2021, Redden filed her petition for certiorari. She argued that review was necessary to preserve the statutory duties and liabilities placed on ski area operators "in the name of public safety" by the SSA and the PTSA.

The petition argued that the PTSA was enacted to further the safety policy interests of the state and that the statutory implementation of that policy was achieved primarily by placing the primary responsibility for the operation of ski lifts upon ski area operators. The petition noted that the General Assembly's legislative declaration for the SSA stated that it was enacted "to supplement the [PTSA]." The petition relied on the supremacy provision of the SSA in CRS § 33-44-114, which states that "[i]nsofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls." The Petition argued that Section 114 was at the heart of the Colorado Supreme Court holding in *Stamp v. Vail*, htat the SSA has "primary control over litigation arising from skiing accidents."

9. Post-Redden

   a. *Huber v. Granby Ranch.* Kelly Huber, age 40, and her daughters ages 12 and 9, were ejected from the Quick Draw Express chairlift when it malfunctioned due to an electrical control malfunction. Ms. Huber died as a result of her injuries. In the ensuing wrongful death case, Granby Ranch moved to dismiss on the basis of the decedent's signed waiver.

      The Grand County District Court denied the motion to dismiss. It found that although the exculpatory agreement was written broadly and referenced risks inherent in riding chairlifts, including falling when loading or unloading, it did not cover a lift malfunction or a 25-foot fall from a chair swinging into a lift tower and ejecting the occupants. Grand County District Court Judge Mary Hoak, relying on the fourth element of the *Jones* test—a clear expression of the parties' intention—wrote that "[t]he Court does not find, in light of the facts alleged, that the Season Pass Agreement expresses the intentions of the parties in clear and unambiguous language."

   b. In *Miller v. Crested Butte*, 2023SA186, the Court issued an Order and Rule to Show Cause, under CAR 21. In the underlying case, the District Court to a Petition filed following an Order Granting a Motion to Dismiss filed on behalf of Crested Butte, and relying upon a waiver. The underlying accident involved a 16-year-old who slipped off the chairm and hung on for some time before falling. The lift attendant allegedly was unobservant and failed to stop the lift in time to prevent the injuries the plaintiff sustained. The Petition before the Supreme Court alleges that Crested Butte's operation of the chairlift constituted violations of the Colorado Ski Safety Act, the Colorado Passenger Tramway Safety Act and the ski area's common law duty to exercise the highest degree of care to passengers on public tramways.

      The matter is presently pending before the Colorado Supreme Court.

   c. *Hart v. Blume,* skier collision case involving on-duty Breckenridge snowboard instructor. Held, the plaintiff's online signature on a Vail season pass effectively waived any claim against the ski area operator and its employees, even in a case based upon the statutory duties of care commonly imposed upon skiers/snow-riders who are involved in collisions.

d. Summary judgment denied when the skier disputed whether he electronically signed the liability waiver when renewing the pass. *Johnson v. Vail Resorts, District Court*, Broomfield County 2022 WL 20099578 (December 21, 2022).

e. *Lopez v. Bladium,* Denver District Court, 2020CV31039, 2021 WL 470417 (June 18, 2021). CPLA claim.

At her fitness club, the plaintiff signed a waiver. She slipped and fell when walking to the bathroom. The Court applied the *Redden* and found that the hazards and dangers laid out in the waiver did not include falling on a wet or slippery floor on her way to the bathroom.

f. *Gutekunst v. Vail Summit Resorts, Inc.,* District Court, Summit County 2020CV30072, 2021 WL 4620716, (June 18, 2021).

CPLA claim.

On May 5, 2019, Gutekunst rode a chairlift to the top of Breckenridge Mountain, a ski area owned by Vail, for a day of skiing. Gutekunst was no stranger to the slopes – this was her forty-second day of skiing that season. At around noon, Gutekunst walked into the bathroom in the Pioneer Crossing restaurant – also owned by Vail as part of the ski area's facilities – at the top of the mountain in her ski boots. As this bathroom was the only one on top of the mountain, it was the only one within a practicable and convenient distance for Gutekunst. While there was allegedly a caution sign in the bathroom alerting patrons to the presence of water on the floor, Plaintiff claims there were no carpets or rubber mats in the bathroom to keep skiers from slipping and falling. When exiting the stall, Plaintiff allegedly slipped and fell on a puddle of water and sustained an injury. She alleges that Vail "failed to exercise reasonable care" to "reasonably protect Plaintiff" from slipping and falling.

Gutekunst had previously signed a liability waiver at the time she purchased her season pass, on September 8, 2018. The liability waiver provides for a release of liability, waiver of claims, assumption of risk, and indemnification against Vail. It purports to release Vail from any claims arising from a customer's use of any of its facilities, even if the claims arise from Vail's ordinary negligence. . . .

The Court GRANTS Defendant's Motion in its entirety. Vail is entitled to summary judgment on Gutekunst's PLA claim and on David Gutekunst's loss of consortium claim.

g. *Doe v. Wellbridge Club Mgmt. LLC,* 2022 COA 137, *reh'g denied* (Dec. 22, 2022), *cert. denied*, 23SC46, 2023 WL 5419156 (Colo. Aug. 21, 2023)

Background: Mother brought action against athletic club asserting Premises Liability Act (PLA) claim, respondeat superior liability, and claims for negligent hiring and retention, negligent supervision, negligence, and negligent infliction of emotional distress, arising

out of sexual abuse of minor daughter by club employee. The District Court, Denver County, J. Eric Elliff, J., 2021 WL 4700183, granted club's motion for summary judgment, and entered an order for costs against mother. Mother appealed.

On appeal, the Court reasoned, As matter of first impression, the Court of Appeals, Navarro, J., held that exculpatory provision in club agreement did not bar mother's claims.

> When read as a whole, the "dominant focus" of the exculpatory provision is on the risks of athletic activities associated with the use of the Club's facilities. The provision makes no mention of the risk of sexual assault or of activities raising such a risk. Although a release "need not contain any magic words to be valid," it must contain "some reference to waiving personal injury claims *based on the activity being engaged in*."

Doe v. Wellbridge Club Mgmt. LLC, 2022 COA 137, ¶ 18, *reh'g denied* (Dec. 22, 2022), *cert. denied,* 23SC46, 2023 WL 5419156 (Colo. Aug. 21, 2023)

Judgment reversed, costs order vacated, and case remanded.

h. *See also*, Jim Chalat, Mike Thomson, Hunter Hatten, "Colorado Ski Law in the 21st Century-Part 1 the No-Duty Doctrine for Ski Area Operators After Redden," THE COLORADO LAWYER, April 2023, at 42, 43 (2023); Part 2, 52-August COLO. LAW 54 (2023). This two-part article discusses the history of ski law in Colorado and how Redden v. Clear Creek Skiing Corp., decided on December 31, 2020, has significantly changed the duties imposed on ski area operators.

33-44-109 COLLISION CASES

10. Statistics:

    a. 2022-2023 17 skier resort fatalities. *Compare,* 2011-2012 season 22 resort fatalities. CDPHE, Blevins, "Colorado Sun survey," The Colorado Sun (May 30, 2023)

    b. Skiing: 2.67 injured per 1000 skier visits

    c. Snowboarding: 3.37 injured per 1,000 snowboarder visits.

    d. Nationally, NSAA reported 64.7 Million skier visits in the 2022-2023 season.

    e. Colorado Ski Country USA reported 14.8 Million skier visits in the 2022-2023.

    f. NEISS Statistics: Sources US CPSC, NEISS, NSAA, ASTM Ski Safety &Trauma:

        i. Estimated 62,700 Nationwide Hospital/snow sports E.D.visits calendar year 2014 Predicted CO skier hospital visits: ~25,250

        ii. Approx. 5% are skier/skier collision injuries.

        iii. Fatality Rate: 0.64 deaths per million skier visits.

        iv. Severe/nonfatal injury, i.e., paralysis & brain trauma rate ~ equivalent to fatality rate: 0.65 per 1 million skier visits

    g. Fixler, et al., "Whiteout, Part 1: Uncovering the human toll of Colorado's ski industry" *Summit Daily News* (April 2017).

    h.

11. Basic Principles:

    a. Skier was entitled to instruction in accordance with 'rule of the road' to effect that if a party looked in such a manner as to fail to see what must have been plainly visible, he or she looked without a reasonable degree of care, and such look is of no more effect than if he or she had not looked at all. *Ninio v. Hight,* 385 F.2d 350 (10th Cir. 1967)

    b. The Colorado Ski Safety Act ("SSA") still controls in collision cases. Here are the core elements of the SSA:

    (1) Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing; except that a skier is not precluded under this article from suing another skier for any injury to person or property resulting from such other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary, the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(2) Each skier has the duty to maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him.
(3) No skier shall ski on a ski slope or trail that has been posted as "Closed" pursuant to section 33-44-107(2)(e) and (4).
(4) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails.
(5) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others . . .
(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail . . .
(10) No skier involved in a collision with another skier or person in which an injury results shall leave the vicinity of the collision before giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision; in which event the person so leaving the scene of the collision shall give his or her name and current address as required by this subsection (10) after securing such aid.

C.R.S. § 33-44-109(1) – (10)

c. Interpretive caselaw:

i. *Ulissey v. Shvartsman*

....Given the statutory duties imposed on the uphill skier and all skiers, the task is to determine who was uphill and whether that skier breached the duty to avoid colliding with skiers "below." ...

...While uphill skier has better opportunity to observe people and objects below, that skier's duty under Colorado Ski Safety and Liability Act to keep a proper lookout is considered primary but nothing in Act makes that skier's duty exclusive; thus, when a collision occurs, Act creates presumption that uphill skier, if there is an uphill skier, had better opportunity to avoid the collision but that statutory presumption remains rebuttable. West's C.R.S.A. § 33–44–109(2)...

...Genuine issues of material fact existed as to whether plaintiff or defendant was the uphill skier and whether plaintiff or defendant was the one who collided into the other precluding summary judgment in action brought under Colorado Ski Safety and Liability Act which creates a rebuttable presumption that a skier who collides with another skier is negligent. West's C.R.S.A. § 33–44–109(2)....

...Under Colorado Ski Safety and Liability Act, there is a rebuttable presumption that a skier who collides with another skier is negligent. West's C.R.S.A. § 33–44–109(2).... *Ulissey v. Shvartsman,* 61 F.3d 805 (10th Cir. 1995).

ii. *Norman v. Howard.* Generally, under the Colorado Ski Safety "the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him." C.R.S. § 33-44-109(2). The crux of the Plaintiff's argument is that based upon the facts of this case this factual dispute is not determinative. . . . A different subsection of the Ski Safety Act provides that "(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail."

The facts were disputed. Summary Judgment was denied. *Norman v. Howard,* Eagle County District Court, 2017CV30261, 2018 WL 8221314, at *2 (November 1, 2018)

12. Pragmatic considerations:

    a. Jurisdiction (Federal or State Court) –The forum defendant rule, 28 U.S.C. § 1441(b), enacted in 1948 and most recently revised by the Federal Courts Jurisdiction and Venue Clarification Act of 2011. This rule enables plaintiffs' attorneys to keep a case in state court even when there is complete diversity.

    b. Plead *per se* negligence "statutory negligence" under the SSA.

    c. Minor children may be defendants. "Under Colorado's Ski Safety Act, a 'skier' is defined as "any person" which must be read to include all people without regard to age because the plain meaning of the phrase warrants such an interpretation. C.R.S. § 33–44–103(8)." *Doering v. Copper Mountain, Inc.,* 259 F.3d 1202 (10th Cir. 2001).

13. Early discovery –

    a. Subpoena Duces Tecum to the ski area operator for the entire Accident Investigation or reports, *and* the parties' lift pass scan data, *plus* identify all witnesses and ski patrollers without redactions. In some circumstances provide a HIPAA release as ski patrol and urgent care on the mountain would be considered medical care.

    b. Obtain the medical care for the *entire stream* of care from the F.A.R. (First Aid Room) or ski area base urgent care, through transport, E.D., and Admission.

    c. Ethically background potentially responsible parties for collectability.

14. Pluses and minuses of ski-safety expert.

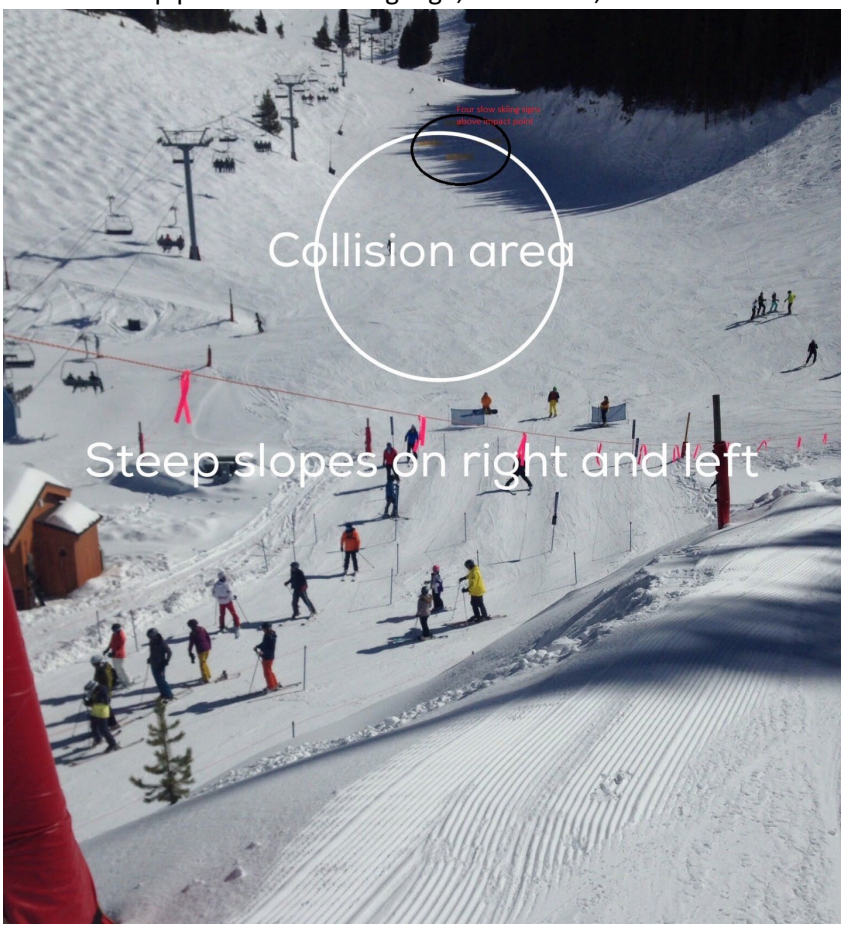
    a. Is it just an uphill or downhill case?

    b. Is there a special circumstance that requires an expert to explain the terrain, do a momentum calculation, or the ski patrol protocols?

c. Is it a case involving an unusual set of circumstances or likely summary judgment proceedings?

d. Or when the parties did not photograph the area themselves or with a cell phone:

Or to mark up photos to show signage, landmarks, and locations of the incident.



15. Offer and have admitted all medical records in which the plaintiff is noted as reporting that he or she was hit by the uphill skier For instance:

This is a 63-year-old gentleman who was struck by another snow rider causing him to fall onto his left side. He resulting left shoulder dislocation, left glenoid fossa fracture as well as a left intertrochanteric femur fracture. He is otherwise alert and oriented resting comfortably after a pain medicine. He will be discharged into the service of orthopedics for surgical repair.[RB1.2]

HISTORY:
The patient was skiing when she was collided into by another skier and felt instant pain in her left upper arm. Ski Patrol was contacted where she was packaged per protocol and administered field analgesia, and transported to the contact location. Upon contact the patient is an otherwise healthy appearing older adult female in good physical condition. She is currently complaining of pain 7/10 and sharp

16. Understand how to obtain, read, and use electronic evidence, including the 911 calls, cell phone data and GPS data, credit card data, security, or public video.

    a. most smartphones, iPhones, and Androids will pick up GPS/Lat.-Long. data on either the .jpg or .HEIC file formats for the camera application.

17. Ski the area of the incident with your expert.
18. Depose the ski patrollers, the parties, and any witnesses.

Sample Jury Instructions:

JURY INSTRUCTION NO. _____

To look in such a manner as to fail to see what must have been plainly visible is to look without a reasonable degree of care and is of no more effect than not to have looked at all.

Colo. Jury Instr., Civil 9:13 – Looking but Failing to See as Negligence

At the time of the occurrence in question in this case the Colorado Ski Safety Act was in effect. The Colorado Ski Safety Act states:

"Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability... the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another." Colo. Rev. Stat. § 33-44-109(1).

"Each skier has the duty to maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him." Colo. Rev. Stat. § 33-44-109(2).

"Each skier has the duty… to refrain from acting in a manner which may cause or contribute to the injury of the skier or others." Colo. Rev. Stat. § 33-44-109(5).

A violation of these statutes constitutes negligence. If you find such a violation, you may only consider it if you also find that it was a cause of the claimed injuries, damages, and losses.

Colo. Jury Instr., Civil 9:14 – Negligence Per Se—Violation of Statute or Ordinance

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Colorado Ski Law 2023 – Ski Area Immunity under Redden v. Clear Creek. What claims remain?

SPONSOR ID:
COLBAR

Date of Program:
1/1/2023

Program Type:
Home Study

Accreditation Date:
10/27/2023

Accreditation Exp. Date:
12/31/2025

Course ID:	GENERAL CREDITS	ETHICS CREDITS	EDI CREDITS
836355	1.00	0.00	0.00

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